

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

Claude M. Stern (Bar No. 96737)

2 claudestern@quinnemanuel.com

Evette D. Pennypacker (Bar No. 203515)

3 evettepennypacker@quinnemanuel.com

Thomas E. Wallerstein (Bar No. 232086)

4 tomwallerstein@quinnemanuel.com

Gabriel S. Gross (Bar No. 254672)

5 gabegross@quinnemanuel.com

555 Twin Dolphin Drive, Suite 560

6 Redwood Shores, California 94065-213

Telephone: (650) 801-5000

7 Facsimile: (650) 801-5100

8 Attorneys for Kraft Foods Global, Inc.

9  
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 THE PROCTER & GAMBLE COMPANY,

14 Plaintiff,

15 vs.

16 KRAFT FOODS GLOBAL, INC.,

17 Defendant.

CASE NO. 3:08-cv-00930 PJH

DECLARATION OF CLAUDE M. STERN  
IN SUPPORT OF KRAFT FOODS GLOBAL,  
INC.'S REPLY IN SUPPORT OF MOTION  
FOR STAY

1 I, Claude M. Stern, declare as follows:

2 1. I am a partner with the law firm Quinn Emanuel Urquhart Oliver & Hedges LL,  
3 counsel to defendant Kraft Foods Global, Inc. ("Kraft"), defendant in the above-referenced action.

4 2. Each of the following statements is made of my own personal knowledge and, if  
5 called upon to testify about any of these matters, I could and would competently do so.

6 3. On October 3, 2007, I argued to this Court in favor of Kraft's motion to stay the  
7 '418 litigation. I made absolutely no suggestion that granting the stay would forever end all  
8 litigation between the parties. I did not know at that time that Kraft would later sue P&G for  
9 infringement of the '443 patent. When I stated to this Court that a stay of the '418 patent's  
10 litigation could eliminate "this" (*i.e.*, the '418 patent) litigation, that statement was absolutely true.  
11 As of that date, P&G had not asserted the '419 patent against Kraft, either informally (by letter  
12 demand) or formally (but suit). I certainly did not intend to imply, and did not understand this  
13 Court to infer, that a stay of the '418 litigation would forever preclude any and all litigation  
14 between the parties, even as to unrelated patents.

15 4. Attached hereto as Exhibit A is a true and correct copy of correspondence from the  
16 United States Patent and Trademark Office (the "PTO") granting Kraft's request for *ex parte*  
17 reexamination of United States Patent Number 7,169,418. ("the '418 patent").

18 5. In the Wisconsin Action, after the '419 infringement claims were transferred to this  
19 Court, I took on behalf of Kraft the depositions of two inventors named on United States Patent  
20 Number 7,169,419 ("the '419 patent"). During both depositions, I diligently refrained from asking  
21 questions designed to elicit discovery relating to the '419 and '418 infringement actions. Kraft's  
22 '443 patent relates to a spacing structure on the underside of an overcap to a package, which  
23 prevents a vent valve on a membrane (which is attached to the package) from being blocked by the  
24 overcap. P&G had defended against the '443 infringement claim by arguing, among other things,  
25 that P&G had invented the '443 patent inventions before Kraft, and that the '419 patent  
26 specification reflected this prior invention. The only questions I asked that related to the '419 and  
27 '418 patents related to this P&G defense of the '443 patent infringement claim. I did not ask any  
28 questions that related or pertained directly to P&G's claim of infringement against Kraft. In fact,

1 during the depositions, I do not recall that the P&G lawyer ever objected on the ground that I was  
2 asking any questions that related to P&G's infringement claims against Kraft.

3 6. Attached hereto as Exhibit B is a true and correct copy of Judge Crocker's March  
4 20, 2008 Order on P&G's motion to compel.

5 7. P&G filed an appeal from this Court's order granting the stay on the '418 patent  
6 case on or about November 9, 2007. At no time did P&G seek any sort of expedited treatment of  
7 that appeal. To the best of my knowledge, P&G did not file a motion with the Federal Circuit to  
8 expedite the appeal or ask for expedited briefing of the appeal or ask for an early argument on the  
9 appeal. On or about March 16, 2008, Kraft and P&G participated in a mediation to settle the suits  
10 between them. I understood that, because of the March 2008 mediation, the Federal Circuit's  
11 mediation center had chosen to defer any action on P&G's appeal until after the mediation had  
12 been completed. That mediation completed on March 16, 2008, and by agreement, the parties  
13 engaged in another neutral-based settlement conference. Following the mediation efforts, I  
14 assumed that P&G would seek to have the Federal Circuit move its appeal forward to disposition.  
15 In fact, I learned from the Federal Circuit mediation department about two weeks ago this was not  
16 the case, and that P&G had not contacted anyone at the Federal Circuit to move its appeal of this  
17 Court's '418 stay order to disposition (i.e. to obtain a date where the matter would be argued before  
18 the Federal Circuit). Hence, to the best of my knowledge, as of this date, P&G has done nothing  
19 to expedite the disposition of its appeal of this Court's order staying the '418 litigation.

20 8. Attached hereto as Exhibit C is a true and correct copy of my declaration, along  
21 with Exhibits A through D of said declaration, filed in the '418 litigation in support of Kraft's  
22 reply in support of its Motion To Stay, Or In The Alternative, To Expedite Discovery And  
23 Reschedule Preliminary Injunction Hearing.

24 //

25 //

26 //

27

28

1 I declare under penalty of perjury under the laws of the United States that the above  
2 statements are true and correct. Executed this 16th day of June, 2008, in the City of Redwood  
3 Shores, California.

4  
5 DATED: June 16, 2008

6 By /s// Claude M. Stern

7 Claude M. Stern  
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# Exhibit A



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

DO NOT USE IN PALM PRINTER

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

Marvin Petry, Esq.  
Stites & Harbison PLLC  
1199 North Fairfax Street  
Suite 900  
Alexandria, VA 22314

RECEIVED

MAR 20 2008

STITES & HARBISON, PLLC

## EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM

REEXAMINATION CONTROL NO. 90/010,090.

PATENT NO. 7169418.

ART UNIT 3991.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
 United States Patent and Trademark Office  
 Address: COMMISSIONER FOR PATENTS  
 P.O. Box 1450  
 Alexandria, Virginia 22313-1450  
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/010,090	01/18/2008	7169418	X0000000011	4702

27752 7590 03/18/2008

THE PROCTER & GAMBLE COMPANY  
 INTELLECTUAL PROPERTY DIVISION - WEST BLDG.  
 WINTON HILL BUSINESS CENTER - BOX 412  
 6250 CENTER HILL AVENUE  
 CINCINNATI, OH 45224

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 03/18/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Order Granting / Denying Request For Ex Parte Reexamination</b>	<b>Control No.</b>	<b>Patent Under Reexamination</b>	
	90/010,090	7169418	
	<b>Examiner</b>	<b>Art Unit</b>	
	Krisanne Jastrzab	3991	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 18 January 2008 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a) ☐ PTO-892, b) ☒ PTO/SB/08, c) ☐ Other: \_\_\_\_\_

1. ☒ The request for *ex parte* reexamination is GRANTED.

**RESPONSE TIMES ARE SET AS FOLLOWS:**

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the date of service of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2. ☐ The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 ( c ) will be made to requester:

- a) ☐ by Treasury check or,  
b) ☐ by credit to Deposit Account No. \_\_\_\_\_, or  
c) ☐ by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

/Krisanne Jastrzab/  
Primary Examiner  
Art Unit: 3991

cc:Requester ( if third party requester )



Application/Control Number: 90/010,090

Page 2

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### ***Reexamination***

#### **Decision on Reexamination Request**

A substantial new question of patentability affecting claims 1-55 of United States Patent Number 7,169,418 (hereinafter referred to as "the '418 patent") is raised by the request for *ex parte* reexamination.

#### **Extensions of Time**

Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that *ex parte* reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extensions of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

#### **Substantial New Question of Patentability**

The request indicates that the Requestor considers Porteus, Melrose, Lane, Goglio and the Dijk Deformation article as forming a basis for raising a substantial new question of patentability for claims 1-55 of the '418 patent.

Melrose, Lane and Goglio were cited by the requestor in copending reexamination 95/000,219 as raising a substantial new question of patentability as to

Application/Control Number: 90/010,090

Page 3

Art Unit: 3991

claims 1-55. The reexamination was granted however, the Examiner held that one of ordinary skill in the art would not have been motivated to use the top closure of Goglio on the containers of either Melrose or Lane because the containers of Melrose and Lane are designed to flex inwardly in response to a reduction in internal volume, whereas the top closure of Goglio is designed to address the opposing condition by functioning to relieve an increase in pressure within a container. The requestor indicates that the teachings provided in the Dijk Deformation article, as well as, the evidence provided in the accompanying Belcher declaration, address the lack of motivation asserted by the Examiner in reexamination 95/000,219 by providing further support of the knowledge of one of ordinary skill in the art regarding the construction of containers for containment and shipping of food-related products. It is agreed that consideration of Porteus, Melrose, Lane, Goglio and the Dijk Deformation article along with the evidence presented in the Belcher declaration, raises an SNQ as to claims 1-55 of the '418 patent. There is substantial likelihood that a reasonable examiner would consider these teachings important in deciding whether or not these claims are patentable. Accordingly, Porteus, Melrose, Lane, Goglio and the Dijk Deformation article raise a substantial new question of patentability as to claims 1-55, which question has not been decided in previous examination of the '418 patent.

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Art Unit: 3991

### ***Duty of Disclosure***

The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a) to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 7,169,418 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

### ***Service of Papers***

After the filing of a request for reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 CFR 1.248. See 37 CFR 1.550(f).

### ***Waiver of Right to File Patent Owner Statement***

In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester, see 37 C.F.R. 1.550(f).

Application/Control Number: 90/010,090  
Art Unit: 3991

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### **Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Krisanne Jastrzab whose telephone number is 571-272-1279. The examiner can normally be reached on Mon.-Thurs. 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Deborah Jones can be reached on 571-272-1535

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

### **Notice Re Patent Owner's Correspondence Address**

Effective May 16, 2007, 37 CFR 1.33(c) has been revised to provide that:

Application/Control Number: 90/010,090

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Art Unit: 3991

The patent owner's correspondence address for all communications in an *ex parte* reexamination or an *inter partes* reexamination is designated as the correspondence address of the patent.

*Revisions and Technical Corrections Affecting Requirements for Ex Parte and Inter Partes Reexamination, 72 FR 18892 (April 16, 2007)(Final Rule)*

**The correspondence address for any pending reexamination proceeding not having the same correspondence address as that of the patent is, by way of this revision to 37 CFR 1.33(c), automatically changed to that of the patent file as of the effective date.**

This change is effective for any reexamination proceeding which is pending before the Office as of May 16, 2007, including the present reexamination proceeding, and to any reexamination proceeding which is filed after that date.

Parties are to take this change into account when filing papers, and direct communications accordingly.

In the event the patent owner's correspondence address listed in the papers (record) for the present proceeding is different from the correspondence address of the patent, it is strongly encouraged that the patent owner affirmatively file a Notification of Change of Correspondence Address in the reexamination proceeding and/or the patent (depending on which address patent owner desires), to conform the address of the proceeding with that of the patent and to clarify the record as to which address should be used for correspondence.

Telephone Numbers for reexamination inquiries:

Reexamination and Amendment Practice	(571) 272-7703
Central Reexam Unit (CRU)	(571) 272-7705
Reexamination Facsimile Transmission No.	(571) 273-9900

Please mail any communications to:

Mail Stop *Ex Parte* Reexam  
ATTN: Central Reexamination Unit  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Please FAX to:

(571) 273-9900

Application/Control Number: 90/010,090  
Art Unit: 3991

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Central Reexamination Unit

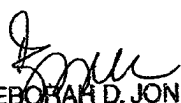
Please hand-deliver to:

Customer Service Window  
Randolph Building  
401 Dulany St.  
Alexandria, VA 22314

/Krisanne Jastrzab/  
Primary Examiner

/Jerry D. Johnson/  
Primary Examiner, AU 3991

Central Reexamination Unit  
Art unit 3991  
(571) 272-1279

  
DEBORAH D. JONES  
CRU SPE-AU 3991

Customized PTO/SB/08a+b (09-06)

Substitute for Form 1449A/PTO  <b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b>	Reexam Control #	
	Patent No. #	7,169,418
	Confirmation #	
	1st Request Date	
	Art Unit	3991
	Examiner	
Sheet 1 of 1	Requestor Docket #	X-011/MP

U.S. PATENT DOCUMENTS				
Exam. Initial*	Document No. Number - Kind	Publ. Date MM-DD-YYYY	Name Patentee or Applicant	Relevance Passages/Figs.
KR	US-Des. 284,941	08-05-1986	Porteous	
	US-3,082,904	03-26-1963	Newcomb et al.	
	US-3,944,127	03-16-1976	Bruke et al.	
	US-4,966,780	10-30-1990	Hargraves et al.	
	US-5,085,034	02-04-1992	Haas	
	US-5,285,954	02-15-1994	Goglio	
	US-5,515,994	05-14-1996	Goglio	
	US-6,733,803	05-11-2004	Vidkjaer	
	US-6,763,969	07-20-2004	Melrose et al.	
KR	US-6,837,390	01-04-2005	Larie et al.	

FOREIGN PATENT DOCUMENTS					
Exam. Initial*	Country-Number-Kind	Publ. Date MM-DD-YYYY	Name Patentee or Applicant	Relevance Passages/Figs.	Translation

NON PATENT LITERATURE DOCUMENTS		
Exam. Initial*	Include NAME of the author (in CAPS), Title of Article/Item, Date, Page(s), Volume-Issue No., Publisher, City and/or Country where published	Translation
K	R. VAN DIJK ET AL., "Lateral Deformation of Plastic Bottles: Experiments, Simulations and Prevention", 1998, Volume 11, Pages 91-117, <u>Packaging Technology and Science</u>	
K	C. MANNHEIM AND N. PASSY, "Interaction Between Packaging Materials and Foods," 1990, Volume 3, Pages 127-132, <u>Packaging Technology and Science</u>	

Examiner Signature	<i>[Signature]</i>	Date Considered	3/14/2008
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\* Examiner: Initial if considered, whether or not citation is in conformance with MPEP §609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

# Exhibit B



IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

---

KRAFT FOODS HOLDINGS, INC.,

Plaintiff,

v.

ORDER

THE PROCTOR & GAMBLE COMPANY,

07-cv-613-bbc

Defendant/Counterclaim Plaintiff,

v.

KRAFT FOODS HOLDINGS, INC.,

Counterclaim Defendant,

and

KRAFT FOODS GLOBAL, INC.,

Third-Party Defendant.

---

On March 18, 2008, this court held a hearing on defendant's motion to compel discovery (dkt. 37) and the collateral motion to strike the reply brief (dkt. 46). Both sides were represented by counsel.

Having read the parties' submissions before the hearing, having entertained further argument and having had my questions answered, I granted the motion to compel and granted the motion to strike for reasons stated on the record. Plaintiff must provide the ordered discovery not later than March 28, 2008. Defendant shall not use any matters discovered as a result of this court's order in any other lawsuit, administrative action, or other proceeding without first obtaining this court's written permission or written permission from plaintiff. Absent plaintiff's consent, defendant shall not seek or obtain additional discovery in the instant lawsuit that is directly and primarily derived from the information obtained in response to this

court's order compelling responses to requests for production 189-200. These limitations are intended to allay plaintiff's concerns that defendant is trying to backdoor discovery for the parties' California lawsuit and that allowing the instant discovery will exponentially expand discovery in the instant lawsuit. The court expects both sides to honor its intent in letter and spirit during further discovery in this case. Each side will bear its own costs on the motion to compel.

Entered this 20<sup>th</sup> day of March, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge

# Exhibit C

1 QUINN EMANUEL URQUHART OLIVER & HEDGES, LLP

2 Claude M. Stern (Bar No. 96737)

3 claudestern@quinnemanuel.com

4 Evette D. Pennypacker (Bar No. 203515)

5 evettepennypacker@quinnemanuel.com

6 Mike D. Powell (Bar No. 202850)

7 mikepowell@quinnemanuel.com

8 555 Twin Dolphin Drive, Suite 560

9 Redwood Shores, California 94065

10 Telephone: (650) 801-5000

11 Facsimile: (650) 801-5100

12 Attorneys for Defendant

13 KRAFT FOODS GLOBAL, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

17 THE PROCTER & GAMBLE COMPANY, a  
18 Delaware corporation,

19 Plaintiff,

20 vs.

21 KRAFT FOODS GLOBAL, INC, a Delaware  
22 Corporation,

23 Defendant.

CASE NO. C 07-4413 PJH

**DECLARATION OF CLAUDE STERN IN  
SUPPORT OF KRAFT FOODS GLOBAL,  
INC.'S REPLY IN SUPPORT OF  
MOTION TO STAY, OR IN THE  
ALTERNATIVE, TO EXPEDITE  
DISCOVERY AND RESCHEDULE  
PRELIMINARY INJUNCTION HEARING**

Date: October 3, 2007

Time: 9:00 AM

Place: Courtroom 3, 17th Floor

quinn emanuel

quinn emanuel

1 I, Claude M. Stern, declare as follows:

2 1. I am a partner with the law firm of Quinn Emanuel Urquhart Oliver & Hedges LL,  
3 counsel to defendant Kraft Foods Global, Inc. ("Kraft"); defendant in the above-referenced action.

4 2. Each of the following statements is made of my own personal knowledge and, if  
5 called upon to testify about any of these matters, I could and would competently do so.

6 3. Attached hereto as Exhibit A is a true and correct copy of a J.P. Morgan North  
7 American Equity Research Report, issued last week, and dated September 18, 2007, which  
8 addresses the extent to which Kraft is likely to cause Procter & Gamble ("P&G") injury or damage  
9 as a result of Kraft's sale of *Maxwell House*® brand coffee in the new plastic container. In the  
10 very introduction of the report, the author states:

11 The PG lawsuit against Maxwell House's new packaging led  
12 us to take a detailed look at KFT's [Kraft's] coffee business.  
13 There is little evidence that the KFT coffee business has  
14 started to turnaround. So for now PG may see the new  
format as a threat but the damage so far (if there is any)  
is not evident. (*Emphasis added.*)

15 4. Attached hereto as Exhibit B is a true and correct copy of a P&G Form 8-K which  
16 P&G filed with the Securities & Exchange Commission on or about September 25, 2007 (2 days  
17 ago). This report can be obtained from the P&G website under the "SEC Filings" headline (at  
18 <http://www.pginvestor.com/phoenix.zhtml?c=104574&p=irol-sec>), and indicates on the last page  
19 the net sales and net earnings that P&G received for, among other things, the "Snacks, Coffee and  
20 Pet Care" product lines, for each of the last three fiscal years (2005, 2006, 2007). According to  
21 this document, the annual sales and earnings for P&G, that presumably would include sales of the  
22 *Folgers* brand coffee products, were as follows:

Fiscal year	Snacks, Coffee and Pet Care Net Sales	Snacks, Coffee and Pet Care Net Earnings
2005	\$4,314,000,000	\$444,000,000
2006	\$4,383,000,000	\$385,000,000
2007	\$4,537,000,000	\$477,000,000

quinn emanuel

1 5. Attached hereto as Exhibit C is a true and correct copy of a press release issued by  
 2 P&G last week on September 18, 2007, which I obtained from the P&G website ( at  
 3 <http://www.pginvestor.com/phoenix.zhtml?c=104574&p=irol-newsArticleMain&ID=1036344>).

4 In the press release, P&G represents that:

5 The Procter & Gamble Company (NYSE: PG) confirmed  
 6 previously announced sales and earnings guidance for the July to  
 7 September quarter of fiscal year 2007/08. The company continues  
to expect sales growth for the quarter of six percent to eight  
percent, organic sales growth in line with previous guidance  
and diluted earnings per share of \$0.88 to \$0.90. (Emphasis  
 8 added.)

9  
 10 6. Attached hereto as Exhibit D is a true and correct copy of a press release issued by  
 11 P&G about three (3) months ago, on June 5, 2007, which I obtained from the P&G website ( at  
 12 [http://www.pginvestor.com/phoenix.zhtml?c=104574&p=irol-](http://www.pginvestor.com/phoenix.zhtml?c=104574&p=irol-newsArticle&ID=1011230&highlight=44)  
 13 [newsArticle&ID=1011230&highlight=44](http://www.pginvestor.com/phoenix.zhtml?c=104574&p=irol-newsArticle&ID=1011230&highlight=44)). In the press release, P&G represents that:

14 The Procter & Gamble Company (NYSE: PG) confirmed  
 15 previously announced sales and earnings guidance for the April to  
 16 June quarter of fiscal year 2006/07. The company continues to  
expect sales growth for the quarter of six percent to seven  
percent, organic sales growth in line with previous guidance  
and diluted earnings per share of \$0.64 to \$0.66. (Emphasis  
 17 added.)

18 7. I have searched the P&G website and Google generally to find any press release or  
 19 other securities filings where P&G states that P&G expected its Folgers brand earnings or sales in  
 20 the coming quarter or two quarters to be adversely affected (whether materially or not) by Kraft's  
 21 release in July 2007 of its *Maxwell House* brand coffee in plastic containers, or by the continued  
 22 sale of Kraft's product. I could find no such press release, filing or report.

23 8. In filing the Preliminary Injunction in this case and in filing its opposition to this  
 24 Motion to Stay, P&G has never submitted to this Court the file history for the '418. Attached  
 25 hereto as Exhibit E is a true and correct copy of just the last office action excerpt of this file  
 26 history. As an example only, this excerpt reveals that, in trying to convince the PTO to issue the  
 27 '418 patent, P&G sought to distinguish certain prior art relied on and cited by the PTO. In  
 28 seeking to distinguish this prior art, P&G made the claim to the PTO that the claims of the '418

51282/2235985.1

DECLARATION OF CLAUDE STERN  
 CASE NO. C 07-4413 PJH

quinn emanuel

1 patent, unlike the specific prior art cited, incorporate something referred to as "region of  
2 deflection." In its explanation to the PTO, P&G sought to define the specific characteristics of a  
3 "region of deflection." Nowhere in its preliminary injunction papers or in its opposition to this  
4 Motion to Stay has P&G made any reference to this file history segment (or any other portion of  
5 the file history).

6 9. In the short time my firm has been involved in this case, we have gathered various  
7 forms of prior art (both printed publication and actual inventions) that I believe render the asserted  
8 claims of the '418 patent invalid, or, at a minimum, reflect a good faith belief that the asserted  
9 claims of the '418 patent are invalid. We have also prepared various charts (all of which are work  
10 product) that reflect how prior art packaging art maps onto the asserted claims of the '418 patent,  
11 and establish that the claims of the '418 patent are, at a minimum, obvious under the KSR v.  
12 Teleflex standard, and therefore invalid under Section 103 of the Patent Act. As an example only,  
13 I attach hereto as Exhibit F a true and correct copy of one of these charts in draft form (applied to  
14 a representative asserted claim).

15 10. P&G argues in Opposition to the Motion to Stay that some or most of the document  
16 requests, interrogatories or requests for admissions that we served on P&G last week as part of our  
17 Motion to Stay seek irrelevant information or are otherwise overbroad. Attached hereto as Exhibit  
18 G is a true and correct copy of a chart that I have assembled (portions were assembled at my  
19 instruction) that identifies in general how each of the discovery requests we have provided to P&G  
20 is relevant to the claim asserted or defenses thereto in this case. As of this date, I have received no  
21 communication from P&G or its lawyers indicating that P&G cannot locate the requested  
22 documents or information, or that it is not feasible for P&G to obtain the documents or  
23 information, or that it is overly burdensome for P&G to obtain the documents or information.

24 ///

25 ///

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27 ///

28

51282/2235985.1

DECLARATION OF CLAUDE STERN  
CASE NO. C 07-4413 PJH

1 I declare under penalty of perjury of the laws of the United States that the foregoing is true  
2 and correct. Executed on September 27, 2007, at Redwood Shores, California.

3  
4  
5   
6 CLAUDE M. STERN

quinn emanuel

28

51282/2235985.1

DECLARATION OF CLAUDE STERN  
CASE NO. C 07-4413 PJH



# EXHIBIT A

North America Equity Research  
19 September 2007



## Kraft Foods

### A Closer Look at Kraft's Coffee Business

The PG law suit against Maxwell House's new packaging led us to take a detailed look at KFT's coffee business. There is little evidence that the KFT coffee business has started to turnaround. So for now PG may see the new format as a threat but the damage so far (if there is any) is not evident.

- When looking at 52-week trailing data, KFT has lost R&G coffee share since 2004. In the last 52 weeks ending 8/11 KFT had 30.5% market in coffee in the FDM+WMT channel compared with PG's 38.9%; while PG gained 1.2pt of share during that period, KFT lost 1.3pt. KFT's share has dropped consistently since 2004 (KFT's R&G coffee share was 32.8% in 2004, 31.8% in 2005, and 30.9% in 2006), but during the same period PG managed to recover market share lost to smaller brands on the back of improved innovation and marketing, and revamped packaging (PG's coffee share was 39.3% in 2004, 37.7% in 2005 and 38.9% in 2006). Importantly, during this period KFT lost ground at WMT and share losses at the flagship Maxwell House were steeper than the share loss in the whole KFT portfolio.
- KFT has become increasingly reliant on the sale of Starbuck's branded coffee. In 2004 22.2pt of KFT's 32.8% market share in FDM+WMT was generated by Maxwell House and KFT's retail sales of Starbuck's coffee accounted for 7.8pt (Yuban and other brands also contributed), but in the last 12 measured weeks Maxwell House's market share was 17.7pt and Starbuck's was 8.2pt (total KFT 30%). In other words, KFT maintained its Starbuck's share but lost almost 5pt in its flagship Maxwell House brand. The data shows KFT has done poorly with Starbuck's at WMT; we estimate Starbuck's accounts for 30% of KFT's coffee sales at FDM but only for 12% at WMT (and for 27% in the combined FDM+WMT channel).

### Overweight

\$34.39

18 September 2007

Food & Food Manufacture

Pablo Zuanic<sup>AC</sup>

(1-212) 622-6744  
pablo.zuanic@jpmorgan.com

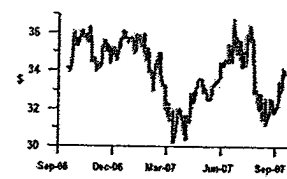
Akshay Jagdale

(1-212) 622-5280  
akshay.x.jagdale@jpmchase.com

Renato Basanta

(1-212) 622-5331  
renato.x.basanta@jpmchase.com

#### Price Performance



YTD -1M -3M -12M

Absolute -5.1% 8.2% -4.0% -0.6%

Source: RIMES, Reuters.

#### Kraft Foods (KFT;KFT US)

	2006A	2007E	2008E
EPS (\$)			
Q1 (Mar)	0.45	0.44A	0.47
Q2 (Jun)	0.51	0.50A	0.55
Q3 (Sep)	0.46	0.42	0.48
Q4 (Dec)	0.52	0.47	0.55
FY	1.94	1.83	2.05
P/E FY	17.7	18.8	16.8
Consensus EPS FY (\$)		1.80	1.94
FV/EBITDA FY	10.70	11.60	10.70

Note: Estimates above are before restructuring charges, and do not factor DA deal. Source: Reuters, JPMorgan estimates.

#### Company Data

Price (\$)	34.39
Date Of Price	18 Sep 07
52-week Range (\$)	37.19 - 29.95
Mkt Cap (\$ mn)	55,230.34
Fiscal Year End	Dec
Shares O/S (mn)	1,606
Price Target (\$)	40.00
Price Target End Date	30 Jun 08

www.morganmarkets.com

J.P. Morgan Securities Inc.

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Pablo Zuanic  
(1-212) 822-8744  
pablo.zuanic@jpmorgan.com

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• KFT is under-indexed at WMT while PG is over-indexed. In the last 12 weeks ending 8/11 KFT had FDM coffee share of 31.8% vs. 34.2% for PG; in that same period PG had 37.8% in FDM+WMT compared with 30% for KFT (we estimate PG's coffee share at WMT is 52% compared with 23% for KFT). Notably, KFT does poorly with Starbuck's at WMT (19pt from Maxwell House and 3pt from Starbuck's of KFT's total 23pt share at WMT). We doubt that WMT will change its stance on Starbuck's coffee, but assume the new Maxwell House (new packaging; and new coffee made from Arabica beans) will be more actively featured at WMT. Still, for now the data points to minimal evidence of a turnaround; in the last 12 weeks both Maxwell House and Starbuck's lost 0.5 of market share on a yoy basis in the FDM+WMT channel.

• Are there any signs of improvement in KFT's coffee business? Since January in the FDM+WMT channel PG has consistently realized better price/mix gains than KFT and has continued to grow consistently ahead of KFT in \$ sales (looking at 12-week moving data). Moreover, while the category has become slightly less promotional (in part due to higher costs), KFT's % of sales under promotion remains above PG and this ratio at KFT has dropped less than at PG. Interestingly, however, in the FDM ex WMT channel KFT seems to be making more of an impact; since April looking at 4-week data, KFT has outgrown PG in 4 out of the last 5 4-week periods measured in terms of \$ sales growth, but we note this has been in part because KFT has lagged the PG price/mix gains (so for now it remains unclear whether the KFT \$ sales outperformance at FDM ex WMT will be sustainable). So while KFT highlights Beverages as one of the divisions making faster progress (than other units) with the company's overall turnaround efforts, the progress vs. competitors is hard to note at this stage.

• At the category level it would seem retail prices have not entirely followed the rise in Robusta coffee costs. Retail coffee prices were flat yoy in 2004 (comparing annual averages), increased 24% in 2005, were flat in 2006, and so far in 1H07 they are up 11%. Taking costs for Robusta coffee, we note costs were down 3% in 2004, increased 44% in 2005, were up 32% in 2006, and are up another 30% yoy in the 1H07. The steep rise in Robusta coffee beans (85c/pound now compared with 35c in 2004) has led producers to increase the mix of Arabica beans in the blend (the move has also been explained by KFT as a way to better fit the taste with consumers desires). But we would be concerned about potential margin pressures in coffee for all industry participants. Moreover, we note Private Label market share tends to move up and down with cost inflation. At times of generally higher coffee prices, PL share increases and then drops as lower costs are passed on to lower retail prices; for example, PL share was 9.8% in 2004, 10.7% in 2005, and 9.7% in 2006 (and 10.8% in the 12 weeks ending 8/11).

Pablo Zuanic  
(1-212) 622-6744  
pablo.zuanic@jpmorgan.com

North America Equity Research  
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### Valuation, Rating and Price Target Analysis

We rate KFT OW as we believe the stock represents greater earnings upside than other restructuring stories in the group (a more unlevered BS; a stronger brand portfolio with 73% of US sales in categories where KFT is #1; below group average margins in both US retail and in Western Europe), and it trades at a discount (8% on PE and FV/EBITDA) to the group. A potential EPS beat in 2007 (low bar) combined with improving sentiment and the lifting of the spin-off overhang (higher PE), should drive above-average returns in the next 12 months. Consolidated gross margins of 36% are below K (44%) and CPB (42%); and even adjusting for mix, the KFT franchise strength is not reflected in the gross margins. In US retail KFT has 17% EBIT margins compared with 23-24% for HNZ and GIS, which only derive 35% of sales from products with #1 market share positions, compared with 73% for KFT. In Western Europe KFT with a concentrated franchise (fewer products than in the US) makes 10% EBIT margins, compared with 17-18% for HNZ and K. Over time, we believe the multiple will better reflect the company's global franchise, leadership positions in several key categories, and potential for higher margins (significant mix improvement, deeper cost cuts, recouping premiums) and improved top line trends.

We have set a target price of \$40 by 6/08. KFT trades at 16.8x our FY08 EPS estimate of \$2.05 (4.8% OCF/FV, 10.3x FV/EBITDA) and pays a 3% dividend yield. Given the margin upside potential (we estimate as much as 500bp over time), room for more buybacks, and positive organic \$ sales growth trends, we believe KFT should trade at a slight premium to the group (for the valuation to account for the opportunity). We have conservatively set a target price of \$40 by 6/08; we estimate at that point NTM EPS of \$2.16 and would put an 18x multiple on it, and to this we would add the \$1.02 dividend. But see further upside beyond mid June 08. We have argued in previous notes that if we take the consensus EPS estimate for FY08 (\$1.94) plus the potential for 500 bps margin expansion (equivalent to +70c to EPS), a \$10B share buyback program as opposed to \$5B (+10c), and apply a 4% CAGR over a three-year period to the resulting number, the EPS could be as high as \$3.00; and this could go up to \$3.20 if we use a 33% tax rate instead of guidance of 37% (with one third of sales overseas KFT should be able to have a lower tax rate). Putting an 18-19x PE multiple on that number would imply significant upside on KFT. We believe our \$40 target price is conservative as it reflects only a portion of the medium term upside potential, in our view.

### Risks to Our Rating and Price Target

We believe Kraft could underperform if 1) the company's marketing investment program does not improve profit margin and market share trends, 2) new products prove cannibalistic and not accretive to margins, 3) the company is forced to increase marketing spend considerably in 2007-2009, 4) commodity costs, especially in dairy and meats, increase and are not passed on to prices, or the current lower costs are entirely offset as competitors (including private label) cut prices; and 5) management is forced to cut guidance during 2007.

Pablo Zuanic  
(1-212) 622-6744  
pablo.zuanic@jpmorgan.com

North America Equity Research  
19 September 2007



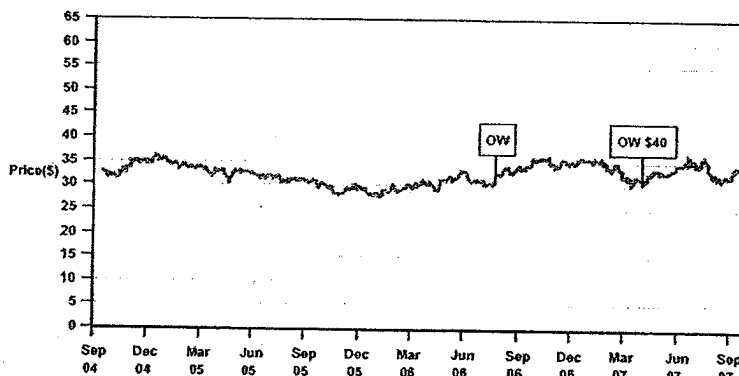
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- **Lead or Co-manager:** JPMSI or its affiliates acted as lead or co-manager in a public offering of equity and/or debt securities for Kraft Foods within the past 12 months.
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- **Investment Banking (past 12 months):** JPMSI or its affiliates received in the past 12 months compensation for investment banking services from Kraft Foods.
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- **JPMorgan and/or its affiliates is acting as a financial advisor to Groupe Danone (GD) on the sale of their global biscuit business to Kraft Foods Inc. (KFT) which announced on July 3, 2007. The transaction is subject to customary closing conditions, including regulatory clearances.**

Kraft Foods (KFT) Price Chart



Date	Rating	Share Price (\$)	Price Target (\$)
25-Jul-06	OW	30.50	-
02-Apr-07	OW	30.85	40.00

Source: Reuters and JPMorgan; price data adjusted for stock splits and dividends.  
This chart shows JPMorgan's continuing coverage of this stock; the current analyst may or may not have covered it over the entire period.  
JPMorgan ratings: OW = Overweight, N = Neutral, UW = Underweight.

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Coverage Universe: **Pablo Zuanic:** Archer-Daniels-Midland (ADM), Bunge Limited (BG), Campbell Soup (CPB), ConAgra Foods (CAG), Dean Foods Company (DF), Flowers Foods Inc (FLO), General Mills (GIS), HJ Heinz (HNZ),

Pablo Zuanic  
(1-212) 622-6744  
pablo.zuanic@jpmorgan.com

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Hain Celestial (HAIN), Hormel Foods Corporation (HRL), Kellogg (K), Kraft Foods (KFT), Pilgrim's Pride (PPC), Ralcorp Holdings Inc (RAH), Sanderson Farms, Inc. (SAFM), Sara Lee Corporation (SLE), Smithfield Foods, Inc (SFD), The Hershey Company (HSY), Treehouse Foods (THS), Tyson Foods (TSN), WM Wrigley Jr (WWY)

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	Overweight (buy)	Neutral (hold)	Underweight (sell)
JPM Global Equity Research Coverage	44%	41%	16%
IB clients*	50%	50%	38%
JPM SI Equity Research Coverage	40%	47%	13%
IB clients*	69%	62%	48%

\*Percentage of investment banking clients in each rating category.

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Pablo Zuanic  
(1-212) 622-6744  
pablo.zuanic@jpmorgan.com

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19 September 2007

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Revised September 17, 2007.

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Pablo Zuanic  
(1-212) 622-6744  
pablo.zuanic@jpmorgan.com

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19 September 2007

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# **EXHIBIT B**



# FORM 8-K

**PROCTER GAMBLE CO - pg**

Exhibit:

**Filed: September 25, 2007 (period: September 25, 2007)**

Report of unscheduled material events or corporate changes.

ITEM 8.01 OTHER EVENTS:

SIGNATURE

EX-99.1 (QUARTERLY SEGMENT  
FINANCIAL INFORMATION)

EX-99.2 (ANNUAL SEGMENT FINANCIAL  
INFORMATION)

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act Of 1934

Date of Report (Date of earliest event reported)

September 25, 2007

**THE PROCTER & GAMBLE COMPANY**

(Exact name of registrant as specified in its charter)



Ohio	1-434	31-0411980
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)
One Procter & Gamble Plaza, Cincinnati, Ohio		45202
(Address of principal executive offices)		Zip Code
(513) 983-1100		45202
(Registrant's telephone number, including area code)		Zip Code

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

**ITEM 8.01 OTHER EVENTS;**

This Form 8-K provides information on the change in the reporting structure of The Procter & Gamble Company (the "Company") and a summary of the effects of this change on the Company's historical segment results. The change in segment reporting will be reflected retrospectively, but in no way revises or restates the Consolidated Statements of Earnings, Consolidated Balance Sheets, Consolidated Statements of Shareholders' Equity or Consolidated Statements of Cash Flows for the Company and consolidated subsidiaries for any period.

**Fiscal Year 2008 Changes to Global Business Unit (GBU) Structure**

In May 2007, the Company announced a number of changes to our organization structure and certain of our key leadership positions that became effective on July 1, 2007. These resulted in changes to our GBU and segment structure. Specifically, our new structure is comprised of three GBUs with a total of six reportable segments:

Global Business Unit (GBU)	Reportable Segment
Beauty	<ul style="list-style-type: none"> <li>• Beauty</li> <li>• Grooming</li> </ul>
Health and Well-Being	<ul style="list-style-type: none"> <li>• Health Care</li> <li>• Snacks, Coffee and Pet Care</li> </ul>
Household Care	<ul style="list-style-type: none"> <li>• Fabric Care and Home Care</li> <li>• Baby Care and Family Care</li> </ul>

Prior to July 1, 2007, the Company consisted of three Global Business Units: Beauty and Health; Household Care; and Gillette GBU. The businesses that previously comprised the Gillette GBU are now included within the Beauty and Household Care GBUs. As a result of these moves, the Duracell and Braun business will no longer comprise a separate reportable segment. The Braun business has been combined and is being managed with the Blades and Razors business to form the Grooming reportable segment within the Beauty GBU. The Grooming reportable segment also includes all face and shave prep products, previously reported within the Beauty reportable segment. The Duracell business has been moved to our Household Care GBU and will be reported as part of our Fabric Care and Home Care reportable segment. Finally, our feminine care business, which previously was part of our Beauty GBU and reportable segment, is now being managed within our Health and Well-Being GBU and will be reported as part of the Health Care reportable segment.

These changes were effective as of July 1, 2007. All financial statements, beginning in the quarter ending September 30, 2007, will reflect the new segment reporting structure. This change in segment reporting will be reflected on a retrospective basis, with prior years also adjusted to reflect the new segment reporting structure. The Company is issuing this Form 8-K in order to provide investors with summary financial information and historical data that is on a basis consistent with the Company's new segment reporting structure. Exhibit 99.1 provides quarterly financial summary information by reportable segment for the fiscal year ended June 30, 2007. Exhibit 99.2 provides fiscal year financial summary information by reportable segment for the fiscal years ended June 30, 2005, 2006 and 2007.

#### SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

#### THE PROCTER & GAMBLE COMPANY

BY: /s/ E. J. WUNSCH

E. J. Wunsch  
Assistant Secretary  
September 25, 2007

#### EXHIBIT(S)

- 99.1. Quarterly Segment Financial Summary Information- Fiscal Year Ended June 30, 2007
- 99.2. Annual Segment Financial Summary Information (Fiscal Years Ended June 30, 2005 - 2007)

EX-99.1

**THE PROCTER & GAMBLE COMPANY AND SUBSIDIARIES**  
**Quarterly Segment Financial Summary Information- Fiscal Year Ended June 30, 2007**  
**(Amounts in Millions)**

		Three Months Ended				Fiscal Year
		9/30/2006	12/31/2006	3/31/2007	6/30/2007	2007
Beauty	Beauty	Net Sales	\$4,324	\$4,656	\$4,365	\$17,389
		Earnings Before Income Taxes	835	1,027	792	3,440
		Net Earnings	634	804	603	2,611
	Grooming	Net Sales	1,845	1,976	1,744	7,437
		Earnings Before Income Taxes	527	530	429	1,895
		Net Earnings	385	386	310	1,383
Health and Well-Being	Health Care	Net Sales	3,336	3,407	3,291	13,381
		Earnings Before Income Taxes	878	960	827	3,365
		Net Earnings	593	648	556	2,233
	Snacks, Coffee and Pet Care	Net Sales	1,063	1,253	1,090	4,537
		Earnings Before Income Taxes	144	232	191	759
		Net Earnings	87	150	116	477
Household Care	Fabric Care and Home Care	Net Sales	5,352	5,511	5,220	21,469
		Earnings Before Income Taxes	1,225	1,234	1,058	4,650
		Net Earnings	831	834	700	3,127
	Baby Care and Family Care	Net Sales	3,099	3,119	3,268	12,726
		Earnings Before Income Taxes	600	548	606	2,291
		Net Earnings	383	341	382	1,440
Corporate		Net Sales	(234)	(197)	(284)	(963)
		Earnings Before Income Taxes	(333)	(441)	(367)	(1,690)
		Net Earnings	(215)	(301)	(135)	(934)
Total Company		Net Sales	18,785	19,725	18,694	76,476
		Earnings Before Income Taxes	3,876	4,090	3,536	14,710
		Net Earnings	2,698	2,862	2,512	10,340

Source: PROCTER &amp; GAMBLE CO, 8-K, September 25, 2007

EX-99.2

**THE PROCTER & GAMBLE COMPANY AND SUBSIDIARIES**  
**Annual Segment Financial Summary Information (Fiscal Years Ended June 30, 2005 - 2007)**  
**(Amounts in Millions)**

			Net Sales	Earnings Before Income Taxes	Net Earnings
Beauty	Beauty	2007	\$17,889	\$3,440	\$2,611
		2006	16,687	3,262	2,412
		2005	15,909	3,051	2,184
	Grooming	2007	7,437	1,895	1,383
		2006	5,114	1,176	846
		2005	10	1	1
Health and Well-Being	Health Care	2007	13,581	3,365	2,233
		2006	11,831	2,785	1,829
		2005	9,880	2,162	1,376
	Snacks, Coffee and Pet Care	2007	4,537	759	477
		2006	4,383	627	385
		2005	4,314	714	444
Household Care	Fabric Care and Home Care	2007	21,469	4,650	3,127
		2006	18,918	3,905	2,609
		2005	15,706	3,186	2,129
	Baby Care and Family Care	2007	12,726	2,291	1,440
		2006	11,972	2,071	1,299
		2005	11,652	1,924	1,197
Corporate		2007	(963)	(1,690)	(931)
		2006	(683)	(1,413)	(696)
		2005	(820)	(1,030)	(410)
Total Company		2007	76,476	14,710	10,340
		2006	68,222	12,413	8,684
		2005	56,741	9,981	6,923

Created by 10K Wizard [www.10KWizard.com](http://www.10KWizard.com)

# **EXHIBIT C**



**Procter & Gamble Confirms Prior Sales and Earnings Guidance for First Quarter 2007/08**

CINCINNATI, Sept. 18 2007 /PRNewswire-FirstCall/ — The Procter & Gamble Company (NYSE: PG) confirmed previously announced sales and earnings guidance for the July to September quarter of fiscal year 2007/08. The company continues to expect sales growth for the quarter of six percent to eight percent, organic sales growth in line with previous guidance and diluted earnings per share of \$0.88 to \$0.90.

In addition, P&G announced that the release date of final results for the July to September quarter is scheduled for October 30, 2007.

**Forward Looking Statements**

All statements, other than statements of historical fact included in this release, are forward-looking statements, as that term is defined in the Private Securities Litigation Reform Act of 1995. Such statements are based on financial data, market assumptions and business plans available only as of the time the statements are made, which may become out of date or incomplete. We assume no obligation to update any forward-looking statement as a result of new information, future events or other factors. Forward-looking statements are inherently uncertain, and investors must recognize that events could differ significantly from our expectations. In addition to the risks and uncertainties noted in this release, there are certain factors that could cause actual results to differ materially from those anticipated by some of the statements made. These include: (1) the ability to achieve business plans, including with respect to lower income consumers and growing existing sales and volume profitably despite high levels of competitive activity, especially with respect to the product categories and geographical markets (including developing markets) in which the Company has chosen to focus; (2) the ability to successfully execute, manage and integrate key acquisitions and mergers, including (i) the Domination and Profit Transfer Agreement with Wella, and (ii) the Company's merger with The Gillette Company, and to achieve the cost and growth synergies in accordance with the stated goals of these transactions; (3) the ability to manage and maintain key customer relationships; (4) the ability to maintain key manufacturing and supply sources (including sole supplier and plant manufacturing sources); (5) the ability to successfully manage regulatory, tax and legal matters (including product liability, patent, and intellectual property matters as well as those related to the integration of Gillette and its subsidiaries), and to resolve pending matters within current estimates; (6) the ability to successfully implement, achieve and sustain cost improvement plans in manufacturing and overhead areas, including the Company's outsourcing projects; (7) the ability to successfully manage currency (including currency issues in volatile countries), debt, interest rate and commodity cost exposures; (8) the ability to manage continued global political and/or economic uncertainty and disruptions, especially in the Company's significant geographical markets, as well as any political and/or economic uncertainty and disruptions due to terrorist activities; (9) the ability to successfully manage competitive factors, including prices, promotional incentives and trade terms for products; (10) the ability to obtain patents and respond to technological advances attained by competitors and patents granted to competitors; (11) the ability to successfully manage increases in the prices of raw materials used to make the Company's products; (12) the ability to stay close to consumers in an era of increased media fragmentation; and (13) the ability to stay on the leading edge of innovation and maintain a positive reputation on our brands. For additional information concerning factors that could cause actual results to materially differ from those projected herein, please refer to our most recent 10-K, 10-Q and 8-K reports.

**About Procter & Gamble (NYSE: PG)**

Three billion times a day, P&G brands touch the lives of people around the world. The company has one of the strongest portfolios of trusted, quality, leadership brands, including Pampers(R), Tide(R), Ariel(R), Always(R), Whisper(R), Pantene(R), Mach3(R), Bounty(R), Dawn(R), Gain(R), Pringles(R), Folgers(R), Charmin(R), Downy(R), Lenor(R), Iams(R), Crest(R), Oral-B(R), Actonel(R), Duracell(R), Olay(R), Head & Shoulders(R), Wella(R), Gillette(R), and Braun(R). The P&G community consists of 138,000 employees working in over 80 countries worldwide. Please visit <http://www.pg.com> for the latest news and in-depth information about P&G and its brands.

SOURCE Procter & Gamble  
- 09/18/2007

CONTACT: media, Doug Shelton, +1-513-983-7893; investors, Chris Peterson, +1-513-983-2414, both of Procter & Gamble

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# **EXHIBIT D**

**Procter & Gamble Confirms Prior Sales and Earnings Guidance for Fourth Quarter 2006/07**

CINCINNATI, June 5, 2007 /PRNewswire-FirstCall/ -- The Procter & Gamble Company (NYSE: PG) confirmed previously announced sales and earnings guidance for the April to June quarter of fiscal year 2006/07. The company continues to expect sales growth for the quarter of six percent to seven percent, organic sales growth in line with previous guidance and diluted earnings per share of \$0.64 to \$0.66.

In addition, P&G announced that the release date of final results for the April to June quarter and for fiscal year 2006/07 is scheduled for August 3, 2007.

**Forward Looking Statements**

All statements, other than statements of historical fact included in this release, are forward-looking statements, as that term is defined in the Private Securities Litigation Reform Act of 1995. Such statements are based on financial data, market assumptions and business plans available only as of the time the statements are made, which may become out of date or incomplete. We assume no obligation to update any forward-looking statement as a result of new information, future events or other factors. Forward-looking statements are inherently uncertain, and investors must recognize that events could differ significantly from our expectations. In addition to the risks and uncertainties noted in this release, there are certain factors that could cause actual results to differ materially from those anticipated by some of the statements made. These include: (1) the ability to achieve business plans, including with respect to lower income consumers and growing existing sales and volume profitably despite high levels of competitive activity, especially with respect to the product categories and geographical markets (including developing markets) in which the Company has chosen to focus; (2) the ability to successfully execute, manage and integrate key acquisitions and mergers, including (i) the Domination and Profit Transfer Agreement with Wella, and (ii) the Company's merger with The Gillette Company, and to achieve the cost and growth synergies in accordance with the stated goals of these transactions; (3) the ability to manage and maintain key customer relationships; (4) the ability to maintain key manufacturing and supply sources (including sole supplier and plant manufacturing sources); (5) the ability to successfully manage regulatory, tax and legal matters (including product liability, patent, and intellectual property matters as well as those related to the integration of Gillette and its subsidiaries), and to resolve pending matters within current estimates; (6) the ability to successfully implement, achieve and sustain cost improvement plans in manufacturing and overhead areas, including the Company's outsourcing projects; (7) the ability to successfully manage currency (including currency issues in volatile countries), debt, interest rate and commodity cost exposures; (8) the ability to manage continued global political and/or economic uncertainty and disruptions, especially in the Company's significant geographical markets, as well as any political and/or economic uncertainty and disruptions due to terrorist activities; (9) the ability to successfully manage competitive factors, including prices, promotional incentives and trade terms for products; (10) the ability to obtain patents and respond to technological advances attained by competitors and patents granted to competitors; (11) the ability to successfully manage increases in the prices of raw materials used to make the Company's products; (12) the ability to stay close to consumers in an era of increased media fragmentation; and (13) the ability to stay on the leading edge of innovation. For additional information concerning factors that could cause actual results to materially differ from those projected herein, please refer to our most recent 10-K, 10-Q and 8-K reports.

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SOURCE The Procter & Gamble Company  
06/05/2007

CONTACT: Media - Terry Loftus, +1-513-983-9736, or Investor Relations - Chris Peterson, +1-513-983-2414, both for The Procter & Gamble Company

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